TELEPHONES, p. 362. In the United States Supreme Court opinion above quoted it is said: "But the principal recognized is, that in the absence of congressional legislation upon the subject, a state may require a common carrier, *although in the execution of a contract for interstate carriage,* to use great care and diligence and to be liable for the whole loss resulting from negligence in the discharge of its duties," and "We can see no difference in the application of the principle—whether enacted into a statute or resulting from the rules of law enforced in the state courts." The same question came squarely before the court in *Hart* v. *C. & N. W. Ry. Co.,* 69 Iowa, 485, and it was there held that a statute similar to the Michigan statute was within the police power of the state, that it fixed no rate, imposed no burdens, prescribed no rules and was therefore not a regulation of commerce beyond the power of the state to make. In view of the inaction of Congress, the decisions of the United States Supreme Court and the unchallenged determinations of numerous state courts for many years, the great weight of authority would appear to support the validity of a state statute, such as the one sustained by the Michigan court.

JUDGMENT—COLLATERAL ATTACK—PRESUMPTIONS.—Plaintiff brought an action to quiet title to certain lands, basing his title upon a deed from one M. to himself. Respondent answered, denying the ownership of said lands in the plaintiff, and averring that he obtained title under sale by execution issued on a judgment against M. Respondent set up the said judgment, and plaintiff sought to show that it was void by failure to get service on M. by publication, as required by law. *Held,* that the present suit is a collateral attack on a judgment, and that in such case, the want of jurisdiction to render the judgment must appear upon the face of the judgment roll, otherwise the judgment is conclusively presumed to be valid. *O'Neill* v. *Potvin* (1907), — Idaho —, 93 Pac. Rep. 20.

In the principal case it appeared upon the face of the judgment that the court had jurisdiction, but the plaintiff attempted by extraneous evidence to contradict the record. It is to be observed that this is an attack upon a domestic judgment, consequently the reasoning of *Pennoyer* v. *Neff,* 95 U. S. 714, 24 L. Ed. 565, does not apply. Throughout the United States, except in New York, it appears to be the rule that in a collateral attack upon a domestic judgment only such facts and circumstances can be shown or relied on in support of such attack as appear affirmatively upon the face of the record, or what under the law constitutes the judgment roll. This question is carefully considered in the leading case of *Hahn* v. *Kelly,* 34 Cal. 391, 94 Am. Dec. 742 (Exhaustive note by A. C. Freeman), where it is said that "the record of a court of superior jurisdiction imports absolute verity and cannot therefore be collaterally impeached from without." This case has been cited with approval by numerous courts, and the principle it enunciates may be taken as firmly established. *Drake* v. *Duvenick,* 45 Cal. 454. As to the modification of the rule in the case of foreign judgments, see *Pennoyer* v. *Neff,* supra; *Galpin* v. *Page,* 3 Sawy. (U. S.) 93; *Belcher*

v. *Chambers,* 53 Cal. 635. New York occupies a peculiar position, holding that want of jurisdiction may always be set up against a judgment, and that the recital of jurisdictional facts in the record is not conclusive but only *prima facie* evidence. *Ferguson* v. *Crawford et al.,* 70 N. Y. 253, 26 Am. Rep. 589.

PRESCRIPTION—DOES NOT JUSTIFY PUBLIC NUISANCE AGAINST INDIVIDUAL RIGHTS.—Action was brought by an abutter to recover for violation of his rights of air, light and access, caused by the construction and maintenance of an elevated railroad; defendants pleaded title by prescription. *Held,* defendants acquired no rights by prescription, for they entered under no pretense of right, because the structure was beyond the franchise granted them. It was, therefore, a public nuisance, and prescription could not justify it, even as against a private person. *Bremer et al.* v. *Manhattan Ry. Co. et al.* (1908), — N. Y. —, 84 N. E. Rep. 59.

An action by an individual for special damages which he may have sustained from a public nuisance will not be barred by the lapse of the prescriptive period. The public right is, of course, not barred, and the individual is regarded as claiming under, and by virtue of, the public right. *Morton* v. *Moore,* 15 Gray (Mass.), 573; *Mills* v. *Hall,* 9 Wend. (N. Y.), 315. But a distinctly private nuisance may be prescribed for, notwithstanding the fact that it may be a public nuisance as well. *Inhabitants of New Salem* v. *Eagle Mill Co.,* 138 Mass. 8; *Borden* v. *Vincent,* 24 Pick. (Mass.) 301; *Charnley* v. *The Shawano Etc., Co.,* 109 Wis. 563. The distinction is not a clearly reasonable one, but it is recognized by the authorities. As to prescription against the public rights, see 6 MICH. LAW REV., p. 580.

PROHIBITION—WHEN GRANTED—THREATENED PROSECUTION.—One Darnell was convicted for selling spirituous liquors within two miles of the corporate limits of Clendennin. The Recorder, acting in the absence of the Mayor, threatened to prosecute him if he again attempted to engage in said business, and as often as he attempted to do so, to cause his imprisonment. Pending an appeal, Darnell, alleging lack of jurisdiction, petitioned for a writ of prohibition to prohibit the defendants from prosecuting him, as threatened. The Circuit Court awarded the writ, but the Court of Appeals *held,* that the writ of prohibition can only operate on a pending suit, and cannot be used to prevent the institution of an action. *Darnell* v. *Vandine, Mayor, et al.* (1908), — W. Va. —, 60 S. E. Rep. 996.

The writ of prohibition lies to prohibit the exercise by an inferior tribunal or officer of judicial powers with which he is not legally vested, and to prevent actions in excess of the jurisdiction conferred by law. *Speed* v. *Common Council,* 98 Mich. 360, 39 Am. St. Rep. 555, 57 N. W. 406. Upon application for the writ the question is whether the court has jurisdiction of the general class of cases to which the particular case belongs. *Fischer* v. *Superior Court,* 98 Cal. 67; *Sherwood* v. *N. E. Knitting Co.,* 68 Conn. 543; *Ex parte Ellyson,* 20 Gratt. (Va.) 10; *McConiha* v. *Guthrie,* 21 W. Va. 134;